IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6417 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GULAM HAIDER SHARIF BALSANIYA POA & VAHIVATKARATA

Versus

POLICE INSPECTOR

Appearance:

MR SURESH M SHAH for Petitioner

PARTY-IN-PERSON for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

Mr. K.T.Dave, A.G.P. for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/07/2000

ORAL JUDGEMENT

Rule. Mr. K.T. Dave learned Assistant Government

Pleader waives service of Notice of Rule on behalf of the respondent-Governmment.

#. The petitioner's vehicle bearing registration No. GJ-2-T-3667 has been detained on account of the violation of the provisions of the Motor Vehicles Act 1988 (hereinafter referred to as the Act). The detention memo dated 15.6.2000 at Annexure-A points out that the petitioner's passenger bus was carrying 60 passengers for which the petitioner did not have any RTO permit. Individual passengers were travelling in the vehicle for fare and there was no contract carriage permit.

#. The contention of Mr. S.M.Shah is that in view of the decision of the Apex Court in the case of State of Maharashtra and ors. vs. Nanded Parbhani Z.I.B.M.V. Operator Sangh reported in AIR 2000 (SC) 725 as per section 207(1) of the said Act, the detaining authority has no power to detain the vehicle where the alleged contravention is pertaining to the number of passengers travelling in the vehicle. Such a condition can be imposed only when condition of the permit relating to the route on which or the area in which or the purpose for which the vehicle could be used is contravened, otherwise not. Mr. Shah has submitted that his case does not fall in any of these categories.

#. Mr. K.T.Dave learned A.G.P submits that this vehicle does not have any permit to carry individual passengers . Therefore, the petitioner could not have used the vehicle for carrying individual passengers on payment. Relying upon a decision reported in 1985(2) GLH 1371 he further submits that on breach of the aforesaid provision, the owner is liable to pay difference of tax to the tune of Rs.20,500/-.

#. Having heard both the learned advocates, it is required to be noted that in the aforesaid judgment of the Apex Court it is mentioned that the expression " purpose for which the vehicle may be used" could not be considered to mean that when the vehicle is found to be carrying passengers more than the number prescribed in the permit, the purpose of the user is otherwise. The purpose would only refer to a contingency. When a vehicle having a permit of stage carriage is used as a contract carriage or vice versa or where a vehicle having a permit for stage carriage or contract carriage is used as a goods vehicle and vice versa. But carrying passengers more than the number specified in the permit

will not be a violation of the purpose for which the permit is granted.

Now in the facts of the instant case it is true that one of the allegations is that there were 60 passengers in the vehicle. It means more passengers than the number of passengers permitted but that is not the only allegation. There is an allegation of carrying individual passengers by accepting fare. Hence the RTO has alleged that the use of the vehicle was sought to be changed for the purpose for which the vehicle may be used. Using such vehicle as stage carriage without permit falls within the said mischief and, therefore, it cannot be said that the authority did not have any power to detain the vehicle.

#. But considering the fact that the vehicle was detained on 15.6.2000 and the authorities have not issued any demand notice so far, interests of justice would be met if the following order is passed:

O R D E R

A) Respondent no.4 shall issue a notice of demand, if so required by the provisions of the Act, calling upon the petitioner to show cause within one month why the amount demanded should not be paid and respondent no.4 shall thereafter give the petitioner an opportunity of hearing and opportunity of producing evidence. After giving such opportunity, respondent no.4 shall decide the matter and quantify the amount of tax and other liability if any payable by the petitioner within three months. In case the petitioner is aggrieved by the decision of respondent no.4, the petitioner will be at liberty to challenge the said decision before the Appellate Authority.

B) In the meantime if the petitioner is desirous of getting the vehicle released from detention, it will be open to the petitioner to deposit a sum of Rs.10,000/- with respondent no.4 without prejudice to his rights and contentions and under protest and also keeping open the petitioner's right to challenge the decision that may be rendered by respondent no.4 on the question of tax liability of the petitioner. If the amount as aforesaid is deposited with respondent no.4 the vehicle shall be released after 24 hours of the said deposit.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah.J)

govindan